

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARTHA ZEPEDA OLIVARES,
individually and on behalf of the
ESTATE OF MAXIMILIANO SOSA,
JR.; MAXIMILIANO SOSA, SR.,

Plaintiffs,

v.

CITY OF FRESNO, UNKNOWN
LAW ENFORCEMENT OFFICERS,
POLICE CHIEF PACO
BALDERRAMA and DOES 1-30,

Defendants.

MARIA SOSA, L.S. by and through
guardian ad litem MARIA SOSA, M.S.
by and through guardian ad litem
JENNIFER LOPEZ, individually and as
successors-in-interest to Maximiliano
Sosa,

Plaintiffs,

v.

CITY OF FRESNO and DOES 1-5,

Defendants.

Case No. 1:23-cv-01575-JLT-SAB

**[PROPOSED] PROTECTIVE
ORDER RE CONFIDENTIAL
DOCUMENTS**

Trial Date: n/a

Case No. 1:24-cv-01039-JLT-SAB

**[PROPOSED] PROTECTIVE
ORDER RE CONFIDENTIAL
DOCUMENTS**

1 PURSUANT TO THE STIPULATION OF THE PARTIES (“Stipulation for
2 Entry of Protective Order re Confidential Documents”), and pursuant to the Court’s
3 inherent and statutory authority, including but not limited to the Court’s authority
4 under the applicable Federal Rules of Civil Procedure and the United States District
5 Court, Eastern District of California Local Rules; after due consideration of all of the
6 relevant pleadings, papers, and records in this action; and upon such other evidence
7 or argument as was presented to the Court; Good Cause appearing therefor, and in
8 furtherance of the interests of justice,

9 **IT IS HEREBY ORDERED that:**

10 **1. SCOPE OF PROTECTION.**

11 The protections conferred by the parties’ Stipulation and this Order cover not
12 only Protected Material/Confidential Information or Items (as defined below), but
13 also (1) any information copied or extracted from Protected Material; (2) all copies,
14 excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
15 conversations, or presentations by Parties or their Counsel that might reveal Protected
16 Material. However, the protections conferred by the parties’ Stipulation and this Order
17 do *not* cover the following information: (a) any information that is in the public
18 domain at the time of disclosure to a Receiving Party or becomes part of the public
19 domain after its disclosure to a Receiving Party as a result of publication not involving
20 a violation of this Order, including becoming part of the public record through trial or
21 otherwise; and (b) any information known to the Receiving Party prior to the
22 disclosure or obtained by the Receiving Party after the disclosure from a source who
23 obtained the information lawfully and under no obligation of confidentiality to the
24 Designating Party.

25 Protected Material/Confidential Information or Items is defined as follows:
26 information (regardless of the medium or how generated, stored, or maintained) or
27 tangible things that qualify for protection under standards developed under Federal
28 Rule of Civil Procedure Rule 26(c) and/or applicable federal privileges. This material

1 includes medical records, psychotherapeutic records, and autopsy photographs. It also
2 includes peace officer personnel records as defined by California Penal Code §§
3 832.8, 832.5, 832.7 and the associated case law. It further includes personal
4 identifying information of third party witnesses.

5 **Any use of Protected Material at trial shall be governed by the Orders of**
6 **the trial judge: this Stipulation and its associated Protective Order do not govern**
7 **the use of Protected Material at trial.**

8 **2. PURPOSES AND LIMITATIONS.**

9 Disclosure and discovery activity in this action are likely to involve production
10 of confidential, proprietary, or private information for which special protection from
11 public disclosure and from use for any purpose other than prosecuting or defending
12 this litigation would be warranted. Accordingly, the parties have stipulated to and
13 petitioned the court to enter the following Order.

14 The parties have acknowledged that this Order does not confer blanket
15 protections on all disclosures or responses to discovery and that the protection it
16 affords extends only to the specified information or items that are entitled, under the
17 applicable legal principles, to treatment as confidential.

18 The parties further acknowledge, as set forth below, that this Order creates no
19 entitlement to file confidential information under seal, except to the extent specified
20 herein; Eastern District Local Rules 141, 141.1, 143, 230, and/or 251 set forth the
21 procedures that must be followed and reflects the standards that will be applied when
22 a party seeks permission from the court to file material under seal.

23 Nothing in this Order shall be construed so as to require or mandate that any
24 Party disclose or produce privileged information or records that could be designated
25 as Confidential Documents/Protected Material hereunder.

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1 **3. DURATION OF PROTECTION.**

2 Even after final disposition of this litigation, the confidentiality obligations
3 imposed by this Order shall remain in effect until a Designating Party agrees
4 otherwise in writing or a court order otherwise directs.

5 Final disposition shall be deemed to be the later of (1) dismissal of all claims
6 and defenses in this action, with or without prejudice; and (2) final judgment herein
7 after the completion and exhaustion of all appeals, rehearings, remands, trials, or
8 reviews of this action, including the time limits for filing any motions or applications
9 for extension of time pursuant to applicable law.

10 **4. DESIGNATION OF PROTECTED MATERIAL**

11 **4.1. Exercise of Restraint and Care in Designating Material for Protection.**

12 Each Party or non-party that designates information or items for protection
13 under the parties' Stipulation and this Order must take care to limit any such
14 designation to specific material that qualifies under the appropriate standards. A
15 Designating Party must take care to designate for protection only those parts of
16 material, documents, items, or oral or written communications that qualify – so that
17 other portions of the material, documents, items or communications for which
18 protection is not warranted are not swept unjustifiably within the ambit of this
19 Order.

20 Mass, indiscriminate, or routine designations are prohibited. Designations that
21 are shown to be clearly unjustified, or that have been made for an improper purpose
22 (e.g., to unnecessarily encumber or inhibit the case development process, or to impose
23 unnecessary expenses and burdens on other parties), expose the Designating Party to
24 sanctions.

25 If it comes to a Party's or a non-party's attention that information or items that
26 it designated for protection do not qualify for protection at all, or do not qualify for
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1 the level of protection initially asserted, that Party or non-party must promptly notify
2 all other parties that it is withdrawing the mistaken designation.

3 4.2. Manner and Timing of Designations. Except as otherwise provided in
4 this Order, or as otherwise stipulated or ordered, material that qualifies for protection
5 under this Order must be clearly so designated before the material is disclosed or
6 produced.

7 Designation in conformity with this Order requires:

8 (a) for information in documentary form (apart from transcripts of
9 depositions or other pretrial or trial proceedings, and regardless of whether produced
10 in hardcopy or electronic form), that the Producing Party affix the legend
11 “CONFIDENTIAL” to each page that contains Protected Material. If only a portion
12 or portions of the material on a page qualifies for protection, the Producing Party also
13 must clearly identify the protected portion(s) (e.g., by making appropriate markings
14 in the margins) and must specify, for each portion that it is “CONFIDENTIAL.” The
15 placement of such “CONFIDENTIAL” stamp on such page(s) shall not obstruct the
16 substance of the page’s (or pages’) text or content.

17 A Party or Non-Party that makes original documents or materials available for
18 inspection need not designate them for protection until after the inspecting Party has
19 indicated which material it would like copied and produced. During the inspection
20 and before the designation, all of the material made available for inspection shall be
21 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
22 documents it wants copied and produced, the Producing Party must determine which
23 documents, or portions thereof, qualify for protection under this Order. Then, before
24 producing the specified documents, the Producing Party must affix the
25 “CONFIDENTIAL” legend to each page that contains Protected Material. If only a
26 portion or portions of the material on a page qualifies for protection, the Producing
27 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
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1 markings in the margins).

15 Transcript pages containing Protected Material must be separately bound by
16 the court reporter, who must affix to each such page the legend "CONFIDENTIAL,"
17 as instructed by the Producing Party.

18 (c) for information produced in some form other than documentary, and for
19 any other tangible items (including but not limited to information produced on disc or
20 electronic data storage device), that the Producing Party affix in a prominent place on
21 the exterior of the container or containers in which the information or item is stored
22 the legend “CONFIDENTIAL.” If only portions of the information or item warrant
23 protection, the Producing Party, to the extent practicable, shall identify the protected
24 portions, specifying the material as “CONFIDENTIAL.”

25 4.3. Inadvertent Failures to Designate. If timely corrected (preferably, though
26 not necessarily, within 30 days of production or disclosure of such material), an
27 inadvertent failure to designate qualified information or items as “CONFIDENTIAL”

1 does not, standing alone, waive the Designating Party's right to secure protection
2 under the parties' Stipulation and this Order for such material. If material is
3 appropriately designated as "CONFIDENTIAL" *after* the material was initially
4 produced, the Receiving Party, on timely notification of the designation, must make
5 reasonable efforts to assure that the material is treated in accordance with the parties'
6 Stipulation and this Order.

7 4.4. Alteration of Confidentiality Stamp Prohibited. A Receiving Party shall
8 not alter, edit, or modify any Protected Material so as to conceal, obscure, or remove
9 a "CONFIDENTIAL" stamp or legend thereon; nor shall a Receiving Party take any
10 other action so as to make it appear that Protected Material is not subject to the terms
11 and provisions of the parties' Stipulation and this Order. However, nothing in this
12 section shall be construed so as to prevent a Receiving Party from challenging a
13 confidentiality designation subject to the provisions of section 5, *infra*.

14 **5. CHALLENGING CONFIDENTIALITY DESIGNATIONS.**

15 5.1. Timing of Challenges. Any Party or Non-Party may challenge a
16 designation of confidentiality at any time that is consistent with the Court's
17 Scheduling Order. Unless a prompt challenge to a Designating Party's confidentiality
18 designation is necessary to avoid foreseeable substantial unfairness, unnecessary
19 economic burdens, or a later significant disruption or delay of the litigation, a Party
20 does not waive its right to challenge a confidentiality designation by electing not to
21 mount a challenge promptly after the original designation is disclosed.

22 5.2. Meet and Confer. Prior to challenging a confidentiality designation, a
23 Challenging Party shall initiate a dispute resolution process by providing written
24 notice of each specific designation it is challenging, and describing the basis (and
25 supporting authority or argument) for each challenge. To avoid ambiguity as to
26 whether a challenge has been made, the written notice must recite that the challenge
27 to confidentiality is being made in accordance with this specific paragraph of this
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1 Protective Order. The parties shall attempt to resolve each challenge in good faith and
2 must begin the process by conferring directly (in voice to voice dialogue, either in
3 person, telephonically, or by other comparable means, but *not* by correspondence)
4 within 14 days of the date of service of notice.

5 In conferring, the Challenging Party must explain the specific basis for its belief
6 that the confidentiality designation was not proper and must give the Designating
7 Party an opportunity to review the designated material, to reconsider the
8 circumstances, and, if no change in designation is offered, to explain the basis for the
9 chosen designation. A Challenging Party may proceed to the next stage of the
10 challenge process only if it has engaged in this meet and confer process first or
11 establishes that the Designating Party is unwilling to participate in the meet and confer
12 process in a timely manner.

13 Frivolous challenges, and those challenges made for an improper purpose (*e.g.*,
14 to harass or impose unnecessary expenses and burdens on other parties), may expose
15 the Challenging Party to sanctions.

16 5.3. Judicial Intervention. If the Parties cannot resolve a confidentiality
17 challenge without court intervention, the Challenging Party shall file and serve a
18 motion to remove confidentiality (under the applicable rules for filing and service of
19 discovery motions) within 14 days of the parties agreeing that the meet and confer
20 process will not resolve their dispute, or by the first day of trial of this matter,
21 whichever date is earlier – unless the parties agree in writing to a longer time.

22 The parties must strictly comply with Eastern District Local Rules 141, 141.1,
23 143, 230, and/or 251 (including the joint statement regarding discovery dispute
24 requirement) in any motion associated with this Protective Order.

25 Each such motion must be accompanied by a competent declaration affirming
26 that the movant has complied with the meet and confer requirements imposed in the
27 preceding paragraph. In addition, the Challenging Party may file a motion challenging
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1 a confidentiality designation at any time if there is good cause for doing so, including
2 a challenge to the designation of a deposition transcript or any portions thereof. Any
3 motion brought pursuant to this provision must be accompanied by a competent
4 declaration affirming that the movant has complied with the meet and confer
5 requirements imposed by the preceding paragraph.

6 The burden of persuasion in any such challenge proceeding shall be on the
7 Designating Party, regardless of whether the Designating Party is the moving party or
8 whether such Party sought or opposes judicial intervention. Frivolous challenges, and
9 those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses
10 and burdens on other parties) may expose the Challenging Party to sanctions. Unless
11 the Designating Party has waived the confidentiality designation by failing to oppose
12 a motion to remove confidentiality as described above, all parties shall continue to
13 afford the material in question the level of protection to which it is entitled under the
14 Producing Party's designation until the court rules on the challenge.

15 **5.4. Withdrawal of “CONFIDENTIAL” Designation.** At its discretion, a
16 Designating Party may remove Protected Material/Confidential Documents from
17 some or all of the protections and provisions of the parties' Stipulation and this Order
18 at any time by any of the following methods:

19 (a) **Express Written Withdrawal.** A Designating Party may withdraw a
20 “CONFIDENTIAL” designation made to any specified Protected
21 Material/Confidential Documents from some or all of the protections of the parties'
22 Stipulation and this Order by an express withdrawal in a writing signed by such Party
23 (or such Party's Counsel, but not including staff of such Counsel) that specifies and
24 itemizes the Disclosure or Discovery Material previously designated as Protected
25 Material/Confidential Documents that shall no longer be subject to all or some of the
26 provisions of the parties' Stipulation and Order. Such express withdrawal shall be
27 effective when transmitted or served upon the Receiving Party. If a Designating Party
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1 is withdrawing Protected Material from only some of the provisions/protections of the
2 parties' Stipulation and this Order, such Party must state which specific provisions
3 are no longer to be enforced as to the specified material for which confidentiality
4 protection hereunder is withdrawn: otherwise, such withdrawal shall be construed as
5 a withdrawal of such material from all of the protections/provisions of the parties'
6 Stipulation and this Order;

7 (b) Express Withdrawal on the Record. A Designating Party may withdraw
8 a "CONFIDENTIAL" designation made to any specified Protected Material/
9 Confidential Documents from all of the provisions/protections of the parties'
10 Stipulation and this Order by verbally consenting in court proceedings on the record
11 to such withdrawal – provided that such withdrawal specifies the Disclosure or
12 Discovery Material previously designated as Protected Material/Confidential
13 Documents that shall no longer be subject to any of the provisions of the parties'
14 Stipulation and this Order. A Designating Party is not permitted to withdraw Protected
15 Material from only some of the protections/ provisions of the parties' Stipulation and
16 this Order by this method;

17 (c) Implicit Withdrawal by Publication or Failure to Oppose Challenge. A
18 Designating Party shall be construed to have withdrawn a "CONFIDENTIAL"
19 designation made to any specified Protected Material/Confidential Documents from
20 all of the provisions/protections of the parties' Stipulation and this Order by either
21 (1) making such Protected Material/Confidential Records part of the public record –
22 including but not limited to attaching such as exhibits to any filing with the court
23 without moving, prior to such filing, for the court to seal such records; or (2) failing
24 to timely oppose a Challenging Party's motion to remove a "CONFIDENTIAL"
25 designation to specified Protected Material/Confidential Documents.

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1 Nothing in the parties' Stipulation and this Order shall be construed so as to
2 require any Party to file Protected Material/Confidential Documents under seal,
3 unless expressly specified herein.

4 **6. ACCESS TO AND USE OF PROTECTED MATERIAL.**

5 6.1. Basic Principles. A Receiving Party may use Protected Material that is
6 disclosed or produced by another Party or by a non-party in connection with this case
7 only for preparing, prosecuting, defending, or attempting to settle this litigation – up
8 to and including final disposition of the above-entitled action – and not for any other
9 purpose, including any other litigation or dispute outside the scope of this action.
10 Such Protected Material may be disclosed only to the categories of persons and under
11 the conditions described in the parties' Stipulation and this Order. When the above
12 entitled litigation has been terminated, a Receiving Party must comply with the
13 provisions of section 10, below (FINAL DISPOSITION).

14 Protected Material must be stored and maintained by a Receiving Party at a
15 location and in a secure manner that ensures that access is limited to the persons
16 authorized under the parties' Stipulation and its Order.

17 6.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless
18 otherwise ordered by the Court or permitted in writing by the Designating Party, a
19 Receiving Party may disclose any information or item designated CONFIDENTIAL
20 only to:

21 (a) the Receiving Party's Outside Counsel of record in this action, as well
22 as employees of such Counsel to whom it is reasonably necessary to disclose the
23 information for this litigation;

24 (b) the officers, directors, and employees (including House Counsel) of the
25 Receiving Party to whom disclosure is reasonably necessary for this litigation – each
26 of whom, by accepting receipt of such Protected Material, thereby agree to be bound
27 by the parties' Stipulation and this Order;

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1 (c) Experts (as defined in the parties' Stipulation and this Order) of the
2 Receiving Party to whom disclosure is reasonably necessary for this litigation – each
3 of whom, by accepting receipt of such Protected Material, thereby agree to be bound
4 by the parties' Stipulation and this Order;

5 (d) court reporters, their staffs, and Professional Vendors to whom
6 disclosure is reasonably necessary for this litigation – each of whom, by accepting
7 receipt of such Protected Material, thereby agree to be bound by the parties'
8 Stipulation and this Order;

9 (e) during their depositions, witnesses in the action to whom disclosure is
10 reasonably necessary – each of whom, by accepting receipt of such Protected
11 Material, thereby agree to be bound by the parties' Stipulation and this Order. Pages
12 of transcribed deposition testimony or exhibits to depositions that reveal Protected
13 Material may not be disclosed to anyone except as permitted under the parties'
14 Stipulation and this Protective Order.

15 (f) the author or custodian of a document containing the information that
16 constitutes Protected Material, or other person who otherwise possessed or knew the
17 information.

18 6.3. Notice of Confidentiality. Prior to producing or disclosing Protected
19 Material/Confidential Documents to persons to whom the parties' Stipulation and this
20 Order permits disclosure or production (see section 6.2, *supra*), a Receiving Party
21 shall provide a copy of the parties' Stipulation and Order to such persons so as to put
22 such persons on notice as to the restrictions imposed upon them herein: except that,
23 for court reporters, Professional Vendors, and for witnesses being provided with
24 Protected Material during a deposition, it shall be sufficient notice for Counsel for the
25 Receiving Party to give the witness a verbal admonition (on the record, for witnesses)
26 regarding the provisions of the parties' Stipulation and this Order and such provisions'
27 applicability to specified Protected Material at issue.

1 6.4. Reservation of Rights. Nothing in the parties' Stipulation and this Order
2 shall be construed so as to require any Producing Party to designate any records or
3 materials as "CONFIDENTIAL." Nothing in the parties' Stipulation or this Order
4 shall be construed so as to prevent the admission of Protected Material into evidence
5 at the trial of this action, or in any appellate proceedings for this action, solely on the
6 basis that such Disclosure or Discovery Material has been designated as Protected
7 Material/Confidential Documents. Notwithstanding the foregoing, nothing in the
8 parties' Stipulation or this Order shall be construed as a waiver of any privileges or
9 of any rights to object to the use or admission into evidence of any Protected Material
10 in any proceeding; nor shall anything herein be construed as a concession that any
11 privileges asserted or objections made are valid or applicable.

12 Nothing in the parties' Stipulation or this Order shall be construed so as to
13 prevent the Designating Party (or its Counsel or custodian of records) from having
14 access to and using Protected Material designated by that Party in the manner in which
15 such persons or entities would typically use such materials in the normal course of
16 their duties or profession – except that the waiver of confidentiality provisions shall
17 apply (see section 5.4(c), *supra*).

18 6.5. Requirement to File Confidential Documents Under Seal. Confidential
19 Documents may be submitted in all law and motion proceedings before the Court if
20 done so under seal pursuant to Federal Rules of Civil Procedure 5.2 and 26 and/or
21 United States District Court, Eastern District of California Local Rules 141, 141.1,
22 143, 230, and/or 251 (as applicable) and pursuant to the provisions of the parties'
23 Stipulation and this Order. If any Receiving Party attaches any Confidential
24 Documents to any pleading, motion, or other paper to be filed, lodged, or otherwise
25 submitted to the Court, such Confidential Document(s) shall be filed/lodged under
26 seal pursuant to Federal Rules of Civil Procedure 5.2 and 26 and/or United States
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1 District Court, Eastern District of California Local Rules 141, 141.1, 143, 230 and/or
2 251 to the extent applicable.

3 However, this paragraph (¶ 6.5) shall not be construed so as to prevent a
4 Designating Party or counsel from submitting, filing, lodging, or publishing any
5 document it has previously designated as a Confidential Document without
6 compliance with this paragraph's requirement to do so under seal (i.e., a producing-
7 disclosing party or counsel may submit or publish its own Confidential Documents
8 without being in violation of the terms of the parties' Stipulation and this Protective
9 Order).

10 Furthermore, a Receiving Party shall be exempted from the requirements of
11 this paragraph as to any specifically identified Confidential Document(s) where –
12 prior to the submission or publication of the Confidential Document(s) at issue – the
13 Designating Party of such specifically identified Confidential Document(s) has
14 waived/withdrawn the protections of the parties' Stipulation and this Order (pursuant
15 to paragraph 5.4, *supra*).

16 A Receiving Party shall also be exempt from the sealing requirements of this
17 paragraph (¶ 6.5) where the Confidential Documents/Protected Material at issue is/are
18 **not** documents, records, or information regarding:

19 (1) private, personal information contained in peace officer personnel files
20 (such as social security numbers, driver's license numbers or comparable personal
21 government identification numbers, residential addresses, compensation or pension
22 or personal property information, credit card numbers or credit information, dates of
23 birth, tax records and information, information related to the identity of an officer's
24 family members or co-residents, and comparable personal information about the
25 officer or his family);

26 (2) any internal affairs or comparable investigation by any law enforcement
27 agency into alleged officer misconduct; and/or

(3) the medical records or records of psychiatric or psychological treatment of any peace officer or party to this action.

Nothing in this paragraph shall be construed to bind the Court or its authorized staff so as to limit or prevent the publication of any Confidential Documents to the jury or factfinder, at the time of trial of this matter, where the Court has deemed such Confidential Documents to be admissible into evidence.

7. **PROTECTED MATERIAL SUBPOENAED OR ORDERED**
8. **PRODUCED IN OTHER LITIGATION.**

9 If a Party is served with a subpoena or a court order issued in other litigation
10 that compels disclosure of any information or items designated in this action as
11 "CONFIDENTIAL," that Party must:

15 (b) promptly notify in writing the party who caused the subpoena or order to
16 issue in the other litigation that some or all of the material covered by the subpoena
17 or order is subject to the parties' Stipulation and this Protective Order. Such
18 notification shall include a copy of the parties' Stipulation and this Protective Order;
19 and

20 (c) cooperate with respect to all reasonable procedures sought to be pursued
21 by all sides in any such situation, while adhering to the terms of the parties'
22 Stipulation and this Order.

23 If the Designating Party timely seeks a protective order, the Party served with
24 the subpoena or court order shall not produce any information designated in this
25 action as “CONFIDENTIAL” before a determination by the court from which the
26 subpoena or order issued, unless the Party has obtained the Designating Party’s
27 permission. The Designating Party shall bear the burden and expense of seeking

1 protection in that court of its confidential material – and nothing in these provisions
2 should be construed as authorizing or encouraging a Receiving Party in this action
3 to disobey a lawful directive from another court.

4 The purpose of this section is to ensure that the affected Party has a
5 meaningful opportunity to preserve its confidentiality interests in the court from
6 which the subpoena or court order issued.

7 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.**

8 8.1. Unauthorized Disclosure of Protected Material.

9 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
10 Protected Material to any person or in any circumstance not authorized under the
11 parties' Stipulation and this Order, the Receiving Party must immediately:

- 12 (a) notify in writing the Designating Party of the unauthorized disclosures;
- 13 (b) use its best efforts to retrieve all copies of the Protected Material;
- 14 (c) inform the person or persons to whom unauthorized disclosures were
15 made of all the terms of this Order; and
- 16 (d) request such person or persons consent to be bound by the Stipulation and
17 this Order.

18 8.2. Inadvertent Production of Privileged or Otherwise Protected Material.

19 When a Producing Party gives notice to Receiving Parties that certain inadvertently
20 produced material is subject to a claim of privilege or other protection, the
21 obligations of the Receiving Parties are those set forth in Federal Rule of Civil
22 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
23 may be established in an e-discovery order that provides for production without
24 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar
25 as the parties reach an agreement on the effect of disclosure of a communication or
26 information covered by the attorney-client privilege or work product protection, the
27 parties may incorporate their agreement in the stipulated protective order submitted
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1 to the court.

2 **9. PUBLICATION OF PROTECTED MATERIAL PROHIBITED.**

3 **9.1. Filing of Protected Material.**

4 Without advance written permission from the Designating Party, or a court
5 order secured after appropriate notice to all interested persons, a Receiving Party
6 may not file in the public record in this action any Protected Material. A Party that
7 seeks to file under seal any Protected Material must comply with the applicable
8 Federal and Local Rules.

9 **9.2. Public Dissemination of Protected Material.**

10 A Receiving Party shall not publish, release, post, or disseminate Protected
11 Material to any persons except those specifically delineated and authorized by the
12 parties' Stipulation and this Order (see section 6, *supra*); nor shall a Receiving Party
13 publish, release, leak, post, or disseminate Protected Material/Confidential
14 Documents to any news media, member of the press, website, or public forum
15 (except as permitted under this Order regarding filings with the court in this action
16 and under seal).

17 **10. FINAL DISPOSITION.**

18 Unless otherwise ordered or agreed in writing by the Producing Party, within
19 thirty (30) days after the final termination of this action (defined as the dismissal or
20 entry of judgment by the above named court, or if an appeal is filed, the disposition
21 of the appeal), upon written request by the Producing Party, each Receiving Party
22 must return all Protected Material to the Producing Party – whether retained by the
23 Receiving Party or its Counsel, Experts, Professional Vendors, agents, or any non-
24 party to whom the Receiving Party produced or shared such records or information.

25 As used in this subdivision, "all Protected Material" includes all copies,
26 abstracts, compilations, summaries or any other form of reproducing or capturing
27 any of the Protected Material, regardless of the medium (hardcopy, electronic, or

1 otherwise) in which such Protected Material is stored or retained.

2 In the alternative, at the discretion of the Receiving Party, the Receiving Party
3 may destroy some or all of the Protected Material instead of returning it – unless
4 such Protected Material is an original, in which case, the Receiving Party must
5 obtain the Producing Party’s written consent before destroying such original
6 Protected Material.

7 Whether the Protected Material is returned or destroyed, the Receiving Party
8 must submit a written certification to the Producing Party (and, if not the same
9 person or entity, to the Designating Party) within thirty (30) days of the
10 aforementioned written request by the Designating Party that specifically identifies
11 (by category, where appropriate) all the Protected Material that was returned or
12 destroyed and that affirms that the Receiving Party has not retained any copies,
13 abstracts, compilations, summaries or other forms of reproducing or capturing any
14 of the Protected material (in any medium, including but not limited to any hardcopy,
15 electronic or digital copy, or otherwise).

16 Notwithstanding this provision, Counsel are entitled to retain an archival copy
17 of all pleadings, motion papers, transcripts, legal memoranda filed with the court in
18 this action, as well as any correspondence or attorney work product prepared by
19 Counsel for the Receiving Party, even if such materials contain Protected Material;
20 however, any such archival copies that contain or constitute Protected Material
21 remain subject to this Protective Order as set forth in Section 3, above. This court
22 shall retain jurisdiction in the event that a Designating Party elects to seek court
23 sanctions for violation of the parties’ Stipulation and this Order.

24 **11. MISCELLANEOUS.**

25 11.1. Right to Further Relief. Nothing in the parties’ Stipulation or this Order
26 abridges the right of any person to seek its modification by the Court in the future.

27 11.2. Right to Assert Other Objections. By stipulating to the entry of this

1 Protective Order pursuant to the parties' Stipulation, no Party waives any right it
2 otherwise would have to object to disclosing or producing any information or item
3 on any ground not addressed in the parties' Stipulation or this Order. Similarly, no
4 Party waives any right to object on any ground to use in evidence any of the material
5 covered by the parties' Stipulation and this Protective Order.

6 The provisions of the parties' Stipulation and this Protective Order shall be in
7 effect until further Order of the Court.

8 **IT IS SO ORDERED.**

9
10 DATED: January ___, 2025

11 Hon. Stanley A. Boone,
12 **UNITED STATES MAGISTRATE**
13 **JUDGE**

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